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05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 RANDY L. ANDERSON,) CASE NO. C05-1193-MJP
08 Plaintiff,)
09 v.) REPORT AND RECOMMENDATION
10 JO ANNE B. BARNHART, Commissioner) RE: SOCIAL SECURITY
of Social Security) DISABILITY APPEAL
11 Defendant.)
12 _____)

13 Plaintiff Randy L. Anderson proceeds through counsel in his appeal of a final decision of
14 the Commissioner of the Social Security Administration (Commissioner). The Commissioner
15 denied plaintiff's application for Disability Insurance (DI) benefits after a hearing before an
16 Administrative Law Judge (ALJ).

17 Having considered the ALJ's decision, the administrative record (AR), and all memoranda
18 of record, it is recommended that the Commissioner be AFFIRMED.

19 **FACTS AND PROCEDURAL HISTORY**

20 Plaintiff was born on XXXX, 1958.¹ He obtained a high school GED. Plaintiff previously

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22 ¹ Plaintiff's date of birth is redacted back to the year of birth in accordance with the
General Order of the Court regarding Public Access to Electronic Case Files, pursuant to the

01 worked as a concrete and long-haul truck driver and as a sheet metal fabricator.

02 Plaintiff filed an application for DI in April 2002, alleging disability beginning March 1,
03 2000. However, based on the denial of a previous application, the ALJ specifically limited the
04 current determination to the period beginning December 29, 2001. ² His alleged disabling
05 conditions included disorders of the back, internal derangement of the left thumb, and depression.
06 (*See* AR 29, 345). Plaintiff's applications were denied initially and on reconsideration, and he
07 timely requested a hearing.

08 ALJ Edward Nichols held a hearing on April 13, 2004. (AR 411-41.) The ALJ heard
09 testimony from plaintiff and vocational expert William Weiss. On September 25, 2004, ALJ
10 Nichols issued a decision finding plaintiff not disabled. (AR 21-28.)

11 Plaintiff appealed the ALJ's decision to the Appeals Council, which declined to review
12 plaintiff's claim. (AR 8-11.) Plaintiff appealed this final decision of the Commissioner to this
13 Court.

14 **JURISDICTION**

15 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

16 **DISCUSSION**

17 The Commissioner follows a five-step sequential evaluation process for determining
18 whether a claimant is disabled. See 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must
19 be determined whether the claimant is gainfully employed. The ALJ found plaintiff had not

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21 official policy on privacy adopted by the Judicial Conference of the United States.

22 ² A May 2001 application, also alleging an onset date of March 1, 2000, was denied on
December 28, 2001. Plaintiff had not sought further review of that claim.

01 engaged in substantial gainful activity during the relevant time period. At step two, it must be
02 determined whether a claimant suffers from a severe impairment. The ALJ found plaintiff's lumbar
03 degenerative disc disease and status-post back surgery, as well as his status-post left carpal
04 metacarpal injury with arthroscopy and degenerative arthritis of the left thumb, to be severe. Step
05 three asks whether a claimant's impairments meet or equal a listed impairment. The ALJ found
06 that plaintiff's impairments did not meet or equal the criteria for any listed impairments. If a
07 claimant's impairments do not meet or equal a listing, the Commissioner must assess residual
08 functional capacity (RFC) and determine at step four whether the claimant has demonstrated an
09 inability to perform past relevant work. The ALJ found plaintiff unable to perform his past
10 relevant work as a concrete and long-haul truck driver. If a claimant demonstrates an inability to
11 perform past relevant work, the burden shifts to the Commissioner to demonstrate at step five that
12 the claimant retains the capacity to make an adjustment to work that exists in significant levels in
13 the national economy. The ALJ found that although plaintiff is unable to perform a full range of
14 light work, he is capable of performing work that exists in substantial numbers, including work as
15 a gate guard, a dispatcher, a sorter, and a semi-conductor bonder.

16 This Court's review of the ALJ's decision is limited to whether the decision is in
17 accordance with the law and the findings supported by substantial evidence in the record as a
18 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir.1993). Substantial evidence means more
19 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable
20 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750
21 (9th Cir.1989). If there is more than one rational interpretation, one of which supports the ALJ's
22 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.

01 2002).

02 In this case, plaintiff argues that the ALJ erred by not finding his depression to be a severe
03 mental impairment, in finding that he had the RFC to perform light work, and improperly relying
04 on the testimony of the vocational expert to find him capable of performing other work in the
05 national economy. Plaintiff further argues that the ALJ, in finding him capable of sedentary work,
06 failed to properly consider the vocational impact of his impairment. He asks for an award of
07 benefits or, alternatively, remand for further proceedings. The Commissioner argues that the
08 ALJ's decision is supported by substantial evidence and should be affirmed.

09 Mental Impairment

10 At step two, plaintiff must make a threshold showing that his medically determinable
11 impairments significantly limit his ability to perform basic work activities. *See Bowen v. Yuckert*,
12 482 U.S. 137, 145 (1987) and 20 C.F.R. § 416.920(c). "Basic work activities" refers to "the
13 abilities and aptitudes necessary to do most jobs." 20 C.F.R. § 416.921(b). "An impairment or
14 combination of impairments can be found 'not severe' only if the evidence establishes a slight
15 abnormality that has 'no more than a minimal effect on an individual's ability to work.'" *Smolen*
16 *v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (quoting Social Security Ruling (SSR) 85-28).
17 "[T]he step two inquiry is a de minimis screening device to dispose of groundless claims." *Id.*
18 (citing *Bowen*, 482 U.S. at 153-54). An ALJ is also required to consider the "combined effect"
19 of an individual's impairments in considering severity. *Id.* At step two in the present case, the
20 ALJ determined that, although plaintiff's back and left thumb conditions amounted to severe
21 impairments, his mental health condition was not severe.

22 Plaintiff asserts error in the ALJ's failure to find his mental impairment severe, claiming

01 the ALJ ignored highly detailed, probative evidence of the severity of his depression. He also
02 points to the impact of the combination of severe mental impairments. He alleges the combination
03 includes the following psychiatric factors: ongoing manic depression; chronic pain that is, at least
04 in part, somatically based; and panic attacks.

05 In determining plaintiff's mental impairment was not severe, the ALJ relied on the reports
06 of Dr. David Chang, plaintiff's treating physician, and Dr. Brian Ready, a pain specialist. (AR 25.)
07 The ALJ also considered the report of Dr. H. Richard Johnson³ on the issue of plaintiff's
08 depression, but afforded it little weight, finding it unsupported by other references in the file. *Id.*
09 The ALJ emphasized plaintiff's lack of significant treatment for conditions reported by Dr.
10 Johnson other than "light use of medication." *Id.* As to the occurrence of plaintiff's panic attacks,
11 the ALJ discounted somewhat plaintiff's reports, stating, "claimant's purported panic attacks seem
12 added on, almost as if the claimant was trying to tack something onto his preexisting and well
13 documented conditions." *Id.* Further, based on plaintiff's testimony at hearing, the ALJ found
14 the panic attacks not to have lasted for the requisite 12-month duration. *Id.*

15 In general, more weight should be given to the opinion of a treating physician than to a
16 non-treating physician, and more weight to the opinion of an examining physician than to a non-
17 examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Dr. Johnson is an
18 orthopedic physician, who in the course of his examination found plaintiff to have "major
19 depressive disorder, mild, controlled currently with medications," and "chronic pain disorder with
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21 ³ Dr. H. Richard Johnson should not be confused with Dr. Edward Johnson, a family
22 practitioner who treated plaintiff in Kettle Falls, Washington, whose reports are part of the record
in this case.

01 physical and psychological features.” (AR 393-94.) Inasmuch as Dr. Chang was plaintiff’s
02 treating physician and Dr. Johnson was not a treating physician, the ALJ appropriately gave more
03 weight to Dr. Chang’s opinion. *Lester*, 81 F.3d at 830. Further, given that Dr. Johnson
04 apparently conducted no psychological testing and is an orthopedist rather than a psychologist or
05 psychiatrist, the ALJ’s position is reasonable. Additionally, Dr. Johnson’s report equivocates on
06 the mental health issue, in that it states plaintiff has a “major” depressive disorder, but later in the
07 same sentence describes the depression as being “mild” and controlled by medications. (AR 393.)

08 The ALJ must consider the combined effect of all of a plaintiff’s impairments on the ability
09 to function, without regard to whether each alone is sufficiently severe. *See Smolen*, 80 F.3d at
10 1289-90. While plaintiff refers to having a “combination” of mental impairments, the medical
11 reports reference only depression and anxiety, for which plaintiff was prescribed amitriptyline and
12 bupropion. (AR 306.) There appears to be no evidence in the record to support plaintiff’s claim
13 of “ongoing manic-depression.” (Dkt. 13 at 5.) Moreover, through a series of visits, Dr. Chang
14 found plaintiff’s depression stable and reconfirmed the lack of need for a psychology consult. (AR
15 287, 298, 308.) Dr. Ready, while increasing plaintiff’s dosage for amitriptyline, concurred in not
16 recommending a psychology consult. (AR 287.)

17 Finally, although plaintiff’s anxiety is mentioned in the medical reports, there was no
18 reference by doctors to panic attacks. (*See, e.g.*, AR 306, 307.) Plaintiff testified at hearing that
19 he had experienced a “big” panic attack lasting five minutes about a month prior to the hearing,
20 and had previously experienced “little” attacks lasting about one minute. (AR 422.) He stated
21 that he “might’ve” mentioned these lesser attacks to Dr. Chang a year or so earlier. *Id.* Absent
22 corroboration, however, the ALJ’s finding that the panic attack condition had not lasted the

01 requisite 12-month duration is reasonable.

02 Residual Functional Capacity, Light and Sedentary Work

03 RFC is the most a claimant can do considering his or her limitations or restrictions. *See*
04 SSR 96-8p. In this case, the ALJ concluded plaintiff retains an RFC to perform light work, and
05 assessed the following restrictions: standing/walking 4 hours in an 8-hour day; limited at bending,
06 stooping, and kneeling; very limited grip and manipulation with his left hand; and minor limitations
07 in concentration. (AR 26.)

08 Although finding plaintiff unable to perform a full range of light work, based on the
09 testimony of the vocational expert, the ALJ found plaintiff capable of adjusting to occupations that
10 exist in substantial numbers in the national economy. Those capabilities included work as a gate
11 guard (DOT 372.667-030), dispatcher (DOT 239.367-014), sorter (DOT 529.687-010), and semi-
12 conductor bonder (DOT 726.685-066). (AR 28.) The ALJ noted that, at hearing, plaintiff stated
13 that he declined a position as a gate guard offered to him because of commuting difficulties, rather
14 than an inability to perform the job. (AR 25-26, 425-26.) In assessing plaintiff's RFC, the ALJ
15 gave very substantial weight to a performance capacity evaluation done by plaintiff's treating
16 physician, Dr. Chang. (AR 24, 26, 401-03.) In addition, the ALJ relied on the records and reports
17 of Dr. Ready and Dr. Edward Johnson in reaching his determination. (AR 24-25.) The ALJ gave
18 the report prepared in connection with the State Disability Determination Service by Dr. Thomas
19 Fleming "a fair degree of weight." (AR 26, 319-25.) Finally, as mentioned above, the ALJ found
20 the assessment of Dr. H. Richard Johnson – that plaintiff was unable to perform even sedentary
21 work on a regular and continuous basis absent possible further surgery to the thumb – to be at
22 odds with other sources. (AR 24.)

01 Plaintiff argues that based on the standing/walking restriction found by the ALJ, he should
02 be found unable to perform any light work and should be restricted to sedentary work. He also
03 argues that his impairments were never considered by the Social Security Administration in a
04 single cohesive analysis, that the ALJ failed to consider all impairments and relevant evidence in
05 rendering the RFC assessment, and that he is significantly compromised in the performance of
06 sedentary work based on his lack of bilateral dexterity.

07 However, plaintiff fails to demonstrate any error in the ALJ's RFC assessment. It is
08 irrelevant that plaintiff may not be able to perform the full range of all light duty jobs. The ALJ
09 found that plaintiff was capable of performing only a limited range of light duty work, and utilized
10 a hypothetical that assumed the more narrow range of light duty work in obtaining the opinion of
11 the vocational expert. (AR 430-31.) The vocational expert testified that the positions of gate
12 guard, sorter, semi-conductor bonder, and dispatcher could be performed with these limitations.
13 (AR 431-33.) Also, as with his mental impairments, the ALJ appropriately gave more weight to
14 Dr. Chang, a treating physician, as compared to Dr. Johnson, an examining physician. *Lester*, 81
15 F.3d at 830.

16 Further, the ALJ considered all of plaintiff's impairments, including his mental impairment,
17 in making his determination: "However, to be charitable, his alleged [mental] symptoms will be
18 taken into account in assessing his residual functional capacity." (AR 25.) The ALJ also
19 recognized minor limitations in concentration. (AR 28.) The ALJ recognized the combined
20 impact of the exertional limitations produced by plaintiff's back and left thumb throughout his
21 decision.

22 Finally, plaintiff's argument that his lack of bilateral dexterity precludes even sedentary

01 work lacks merit. The vocational expert testified, based on a hypothetical that took all of
02 plaintiff's limitations into account, that he was capable of performing other jobs that existed in
03 substantial numbers in the national economy. As discussed above, this finding is supported by
04 substantial evidence.⁴

05 Vocational Expert's Testimony Regarding Left Hand Limitations

06 Plaintiff asserts that the ALJ failed to meet his burden at step five to show he is capable
07 of performing other work. The ALJ based his step five finding that plaintiff is capable of
08 performing work as a gate guard, a dispatcher, a sorter, and a semi-conductor bonder on the
09 testimony of William Weiss, the vocational expert. (AR 26-28, 431-33.) In finding plaintiff not
10 disabled, the ALJ refers to the fact that his limitation relates only to his left, non-dominant hand.
11 (AR 23, 26.) The limitation was taken into account by the vocational expert. (AR 430-36.)

12 Plaintiff takes exception with the vocational expert's assertion that he could perform the
13 job of sorter one-handed, arguing such an assertion does not conform to the medical evidence.⁵
14 In particular, plaintiff relies on a General Aptitude Test Battery he underwent in 2003 as part of
15 a vocational assessment. (AR 396.) The result of that test lists plaintiff's motor coordination at
16 2%, and both finger dexterity and manual dexterity at less than 1%. *Id.* Plaintiff interprets these

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18 ⁴ Plaintiff asserts that he is in reality limited to sedentary work and, with his inability to
19 perform jobs that require bilateral manual dexterity, the Medical-Vocational Guidelines compel
a finding of disability. However, the ALJ's step five finding was based on substantial evidence.

20 ⁵ Plaintiff makes repeated reference to the position of potato chip sorter, a position he
21 describes as requiring that a worker perform quick movements, as well as stand for 6 to 7 hours
22 per day. However, neither the ALJ, nor the vocational expert mentioned such a job. Instead, the
vocational expert described a sorter or basket filler position as typically involving removing things
from a conveyor belt or bottling line. (AR 432.) In addition, the description of this job proffered
by plaintiff does not match the DOT number cited. *See* DOT 529.687-010 (Basket Filler).

